

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Schiavo	Team: Team # 4	CCRB Case #: 201301148	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/27/2013 1:20 AM	Location of Incident: Nostrand Avenue and Parkside Avenue	Precinct: 71	18 Mo. SOL 7/27/2014	EO SOL 7/27/2014	
Date/Time CV Reported Thu, 02/21/2013 2:20 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 02/21/2013 2:20 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. CPT John Doesberg	00000	922267	PBBS
2. SGT Dmitry Brushnivsky	01417	936251	PBBS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Arthur Shaw	20243	952231	PBBS

Officer(s)	Allegation	Investigator Recommendation
A.SGT Dmitry Brushnivsky	Abuse: Sgt. Dmitry Brushnivsky authorized the frisks of § 87(2)(b) and § 87(2)(b)	
B.CPT John Doesberg	Abuse: Capt. John Doesberg authorized the search of the car in which § 87(2)(b) was an occupant.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On February 21, 2013, § 87(2)(b) filed his complaint via the CCRB call processing system (encl. 8-9). On January 27, 2013, at 1:20 a.m., in the vicinity of Nostrand Avenue and Parkside Avenue in Brooklyn, Capt. John Doesberg, Sgt. Dmitry Brushnivsky, and PO Arthur Shaw of Patrol Borough Brooklyn South interacted with § 87(2)(b) his cousin § 87(2)(b) and his friend § 87(2)(b) at a police checkpoint. The following allegations resulted:

- **Allegation A – Abuse of Authority:** Sgt. Dmitry Brushnivsky authorized the frisks of § 87(2)(b) and § 87(2)(b)
- **Allegation B – Abuse of Authority:** Capt. John Doesberg authorized the search of the vehicle in which § 87(2)(b) was an occupant. § 87(2)(g)

- § 87(4-b), § 87(2)(g)

On March 1, 2013, § 87(2)(b) rejected mediation § 87(2)(b).

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on March 1, 2013 (encl. 10-14). On January 27, 2013, at 1:20 a.m., § 87(2)(b) was driving southbound on Nostrand Avenue near the corner of Parkside Avenue in Brooklyn when he encountered a police checkpoint. His cousin § 87(2)(b) was in the front passenger seat and his friend § 87(2)(b) was in the rear passenger seat. § 87(2)(b) added tints to his front driver and passenger side windows after he purchased his vehicle. As § 87(2)(b) approached the checkpoint, PO1, a uniformed black male in uniform who was 5'9"-5'10" and had a medium build, who was identified by the investigation as PO Arthur Shaw, motioned for § 87(2)(b) to pull over.

PO Shaw asked § 87(2)(b) for his license, registration, and insurance. § 87(2)(b) provided his license and insurance, but was unable to locate his registration. He and § 87(2)(b) looked in the glove compartment for the registration because that is where § 87(2)(b) normally keeps it. A few minutes after § 87(2)(b) provided his driver's license, § 87(2)(b) became upset at the length of time it was in PO Shaw's possession. He exited the vehicle and yelled at unidentified officers on the passenger side of the vehicle whom § 87(2)(b) did not see. None of the occupants reached under any of the seats in the vehicle. § 87(2)(b) was unable to locate his registration, and PO Shaw walked away with § 87(2)(b)'s license and insurance. After several minutes, § 87(2)(b) exited the vehicle and yelled at PO Shaw to return § 87(2)(b)'s license and registration.

Shortly thereafter, PO Shaw returned § 87(2)(b)'s documents and used a tint meter to

read the vehicle's windows. PO2, a 6'3" uniformed white male wearing a white shirt, who was identified by the investigation as Capt. John Doesberg, approached and instructed everyone to exit the vehicle. § 87(2)(b) refused and asked why he had to exit the vehicle. Capt. Doesberg repeated the request and stated that § 87(2)(b) would be arrested if he did not comply. All three occupants exited the vehicle. As § 87(2)(b) exited, he told Capt. Doesberg not to illegally search his vehicle. All three occupants stood next to each other at the rear of the vehicle. § 87(2)(b) was facing his vehicle so he could see inside of it.

For about four minutes, unidentified officers whom § 87(2)(b) could not describe searched the entire floor of § 87(2)(b)'s vehicle (in the back and front). Unidentified officers felt the outsides of § 87(2)(b) and § 87(2)(b)'s pockets and then reached into the pockets and removed the contents therein. § 87(2)(b) was unable to provide more details about what the officers did or the descriptions of these officers. No officer frisked or searched § 87(2)(b). The officers told § 87(2)(b) and § 87(2)(b) to get back in the vehicle. About six minutes later, PO Shaw handed § 87(2)(b) summonses—two for excessive window tints and one for failure to present valid registration (encl. 26-27). § 87(2)(b) pled not guilty to the violations and has a scheduled court date for September 17, 2013. § 87(2)(b) later reached under the front passenger seat of his vehicle and realized that his registration had fallen there.

Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on April 26, 2013 (encl. 15-19). As § 87(2)(b) approached the checkpoint, three uniformed male officers approached the vehicle. PO1, whom § 87(2)(b) could not describe, asked § 87(2)(b) for his license and registration. § 87(2)(b) immediately provided his documents. At that point, an officer whom § 87(2)(b) did not recall asked § 87(2)(b) to pull over, and § 87(2)(b) complied. About 20 to 30 minutes passed with the occupants of the vehicle waiting inside the vehicle. § 87(2)(b) did not see what any of the officers did during that time. During that time, none of the men exited the vehicle, switched seats, reached under seats, or moved around inside of the vehicle.

A uniformed 6'1" white male officer wearing a white shirt, identified by the CCRB as Capt. Doesberg, approached with three to four other officers and told § 87(2)(b) to exit his vehicle. § 87(2)(b) asked why and stated that he was going to file a complaint. § 87(2)(b) complied with the instructions to exit the vehicle. An unidentified officer whom § 87(2)(b) could not describe asked § 87(2)(b) to exit the vehicle. Capt. Doesberg asked § 87(2)(b) to exit the vehicle. All three occupants exited at the same time. § 87(2)(b) remained adjacent to § 87(2)(b)'s vehicle on the passenger's side while § 87(2)(b) and § 87(2)(b) remained adjacent to the vehicle on the driver's side.

The officer who asked § 87(2)(b) to exit the vehicle frisked the outside of his clothing. An unidentified officer frisked § 87(2)(b) but § 87(2)(b) was never frisked. Officers whom § 87(2)(b) did not recall entered § 87(2)(b)'s vehicle and searched the front and back seats/floors with flashlights. After 20 to 30 minutes, the officers told the occupants to get back into the vehicle. Shortly thereafter, § 87(2)(b) received three summonses.

Attempts to Contact Civilian

On March 29, 2013, the CCRB contacted § 87(2)(b) who scheduled an interview for April 4, 2013. On April 4, 2013, § 87(2)(b) did not appear and did not call to cancel or reschedule. On April 4, 2013, the CCRB sent him a missed appointment letter. On April 5, 2013,

the CCRB contacted § 87(2)(b) who rescheduled his interview for April 10, 2013. On April 10, 2013, § 87(2)(b) did not appear and did not call to cancel or reschedule his appointment.

NYPD Statements:

Subject Officer: CAPT. JOHN DOESBERG

- *Capt. Doesberg is a § 87(2)(b)-old white male who is 6'0" tall, weighs 200 pounds, is bald, and has blue eyes.*
- *Capt. Doesberg worked by himself as the commanding officer of PBBS IRT from 7:45 p.m. on January 26, 2013, to 4:45 a.m. on January 27, 2013. He was in uniform and was assigned to a marked vehicle, RMP #3367.*

Memo Book

Because of his rank, Capt. Doesberg does not keep a memo book.

CCRB Testimony

Capt. Doesberg was interviewed at the CCRB on May 15, 2013 (encl. 20-21). On January 27, 2013, at 1:20 a.m., Capt. Doesberg directed Sgt. Brushnivsky and his squad to set up a transit checkpoint at Nostrand Avenue and Parkside Avenue in Brooklyn. The checkpoint was for conditions of safety and DWI. Typically, every third vehicle is stopped for a closer inspection, but if a VTL violation is observed, a vehicle will be stopped. Anywhere from 15-17 officers typically are stationed at a typical checkpoint. Capt. Doesberg responded to the location to ensure that the checkpoint had been set up. He observed § 87(2)(b)'s vehicle stopped at the checkpoint. Capt. Doesberg later observed that the windows of the vehicle had dark tints.

After a minute or two, Capt. Doesberg saw that the driver was still in the driver's seat and the engine was still running. § 87(2)(b) was standing outside the rear passenger side of the vehicle with Sgt. Brushnivsky. Sgt. Brushnivsky informed Capt. Doesberg that § 87(2)(b) had been moving around in the backseat as if he was placing something underneath a seat. Capt. Doesberg did not observe § 87(2)(b) exhibit any behavior that indicated he might possess a weapon. Capt. Doesberg thought that this was a potentially dangerous situation, so he approached the driver's side of the vehicle.

§ 87(2)(b) was frisked, but Capt. Doesberg did not recall if § 87(2)(b) was also frisked. Capt. Doesberg did not remember who conducted the frisk of § 87(2)(b). He did not authorize the frisk of any of the occupants. Capt. Doesberg told § 87(2)(b) to turn off his vehicle and exit the vehicle. § 87(2)(b) replied that he was not going to do so. Capt. Doesberg told him that it was a command, and not a request. Capt. Doesberg opened the driver's side door and § 87(2)(b) turned off the engine stepped out of the vehicle. § 87(2)(b) could have been arrested if he did not comply, but Capt. Doesberg did not remember whether he ever informed § 87(2)(b) as much. Capt. Doesberg instructed § 87(2)(b) to walk to the rear of the vehicle, and § 87(2)(b) complied. Capt. Doesberg noticed that § 87(2)(b) was intoxicated, as evidenced by his lack of balance and slurred speech.

Capt. Doesberg searched the reachable area—including the seats, floor, and glove compartment—of § 87(2)(b)'s vehicle with additional officers whom he did not recall. Based on the information provided by Sgt. Brushnivsky, Capt. Doesberg believed that § 87(2)(b) had hidden a weapon in the vehicle. The tone of § 87(2)(b)'s voice was agitated, but Capt. Doesberg did not remember any specific remarks that he made. PO Shaw obtained § 87(2)(b)'s identification and issued him summonses for tinted windows.

Subject Officer: SGT. DMITRY BRUSHNIVSKY

- *Sgt. Brushnivsky is a § 87(2)(b)-old white male who is 5'10" tall, weighs 165 pounds, and has black hair and blue eyes.*
- *Sgt. Brushnivsky worked alone as an Impact sergeant from 7:20 p.m. on January 26, 2013, to 4:17 a.m. on January 27, 2013. He was in uniform and was assigned to marked van #8842.*

Memo Book

According to Sgt. Brushnivsky's memo book (encl. 30-32), at 1:00 a.m. he was at the checkpoint at Nostrand Avenue and Parkside Avenue. However, he did not note this incident in his memo book.

CCRB Statement

Sgt. Brushnivsky was interviewed at the CCRB on May 23, 2013 (encl. 33-34). Sgt. Brushnivsky did not have any recollection of the checkpoint. During the period around January 27, 2013, Sgt. Brushnivsky was establishing approximately one checkpoint per tour. A description of the incident did not refresh Sgt. Brushnivsky's recollection and he did not recognize a photo of § 87(2)(b).

Witness Officer: PO ARTHUR SHAW

- *PO Shaw is a § 87(2)(b)-old black male who is 5'7" tall and has black hair and brown eyes.*
- *PO Shaw worked alone from 7:30 p.m. on January 26, 2013, to 4:05 a.m. on January 27, 2013. He was in uniform and was assigned to a foot post.*

Memo Book

According to PO Shaw's memo book (encl. 22-25), at 1:20 a.m., he issued three summonses to § 87(2)(b) for excessive front driver and passenger window tint and failure to produce registration.

CCRB Testimony

PO Shaw was interviewed at the CCRB on May 15, 2013 (encl. 28-29). Before the "choke point" of the vehicle checkpoint, Capt. Doesberg instructed § 87(2)(b) to pull over. PO Shaw was on the driver's side of § 87(2)(b)'s vehicle, and two unidentified officers were on the passenger side. § 87(2)(b) asked PO Shaw why he was being stopped. PO Shaw stated that he appeared to have dark window tints, but he was not the officer who made the decision to initiate the stop. Fifteen seconds later, Capt. Doesberg and several other unidentified officers approached and Capt. Doesberg informed PO Shaw that he observed a passenger in § 87(2)(b)'s vehicle reach under a seat, possibly in an attempt to secrete something. PO Shaw did not witness any of the occupants make furtive movements, but § 87(2)(b) was visibly intoxicated and verbally acknowledged that he was drunk. PO Shaw did not observe any indication that any of the occupants possessed a weapon.

Capt. Doesberg requested § 87(2)(b)'s driver's license and registration. § 87(2)(b) was unable to produce valid registration, but did produce his driver's license. Capt. Doesberg instructed PO Shaw to run the name and license. Before doing so, PO Shaw used his tint meter to measure the window tints on § 87(2)(b)'s vehicle. While this was happening, Capt. Doesberg told § 87(2)(b) to exit the vehicle. § 87(2)(b) did not move and asked why. Capt. Doesberg repeated his request. PO Shaw did not hear Capt. Doesberg tell § 87(2)(b) that he would be arrested if he did not comply. As PO Shaw walked to a police vehicle, he observed the three occupants exit the vehicle. PO Shaw also saw the three men being frisked and the vehicle being

searched. Capt. Doesberg frisked § 87(2)(b) but PO Shaw did not see which officers frisked § 87(2)(b) and § 87(2)(b). Because PO Shaw was walking towards the police vehicle, he was unable to see which areas of § 87(2)(b)'s vehicle were searched. When PO Shaw came back and handed the summonses to § 87(2)(b), § 87(2)(b) was irate and stated that he was going to take the officers to court.

Summonses for Incident and Dispositions

- The case in relation to the summonses remains open. The next scheduled court date is § 87(2)(b), in Kings County Traffic Court.

Status of Civil Proceedings

- § 87(2)(b) has not filed a notice of claim as of August 12, 2013.

Civilian Criminal Histories

- § 87(2)(b), § 87(2)(c)

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) and the first complaint in which § 87(2)(b) and § 87(2)(b) have been victims (encl. 6-7).

Subject Officer CCRB Histories

- Sgt. Brushnivsky has been a member of the service for eight years and there are no substantiated CCRB allegations against him (encl. 4).
- Capt. Doesberg has been a member of the service for 14 years and there are no substantiated CCRB allegations against him (encl. 5).

Conclusion

Identification of Subject Officers

Capt. Doesberg acknowledged his role in the incident. Neither § 87(2)(b) nor § 87(2)(b) was able to describe the officer(s) who frisked § 87(2)(b) and § 87(2)(b). However, Capt. Doesberg stated that he did not authorize the frisks of any of the vehicle's occupants and that Sgt. Brushnivsky's observations were the basis for Capt. Doesberg asking the occupants to exit the vehicle and then searching the vehicle. Sgt. Brushnivsky also did not note this incident in his memo book. § 87(2)(g)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: Sgt. Dmitry Brushnivsky authorized the frisks of § 87(2)(b) and § 87(2)(b)

Allegation B – Abuse of Authority: Capt. John Doesberg authorized the search of the vehicle in which § 87(2)(b) was an occupant.

According to § 87(2)(b)'s and § 87(2)(b)'s statements, § 87(2)(b) and § 87(2)(b) were both frisked. It is undisputed that Capt. Doesberg searched § 87(2)(b)'s vehicle. Capt. Doesberg acknowledged that § 87(2)(b) was frisked but did not recall if § 87(2)(b) was also frisked. He also stated that he searched § 87(2)(b)'s vehicle because Sgt. Brushnivsky reported to him that § 87(2)(b) had been acting furtively in a manner suggesting that he was concealing

a weapon. PO Shaw testified that Capt. Doesberg frisked § 87(2)(b) but he did not remember who frisked the other occupants. He stated that Capt. Doesberg informed him that § 87(2)(b) had acted furtively. Sgt. Brushnivsky did not remember the incident.

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date